

INVENTORSHIP

This application names as inventors the same inventors as previously designated for the claims.

REMARKS

Claims 1-10 and 15-24 are pending within the present application. No Claims have been added, deleted, or amended.

The Office has retained its rejection of Claims 1-10 and 15-24 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Sawan et al. Applicant does not understand the basis of such a rejection since there is, initially, no actual anticipatory teaching of the claimed invention anywhere within the four corners of the Sawan et al. reference, particularly in view of the affidavit supplied by co-inventor David Green previously. It is axiomatic within the realm of patent law that an anticipation-based rejection requires an explicit or inherent disclosure of the same exact subject matter as presently claimed; this is not found anywhere within the four corners of the cited patent (and the Green declaration shows that inherency does not exist either). Applicant has shown, unequivocally, that the closest teaching, being patentees' actual preferred embodiment within Example 3, but applied to a fabric, does not meet the current claim limitations. There is no specific teaching to a fabric within the preferred embodiments (i.e., actual specific teachings) of Sawan et al., let alone a fabric treated with any amount of silver (or other metal) that meets the same limitations as now claimed. At best, though not agreed to by Applicant, this reference provides some basis

for an obviousness rejection for application of a silver iodide-based finish possibly to a fabric. In order for an anticipatory teaching to be considered proper, it must show the exact same subject matter as claimed by an applicant; however, Sawan et al. do not do so, whether by direct or inferred teachings. Thus, the Office has improperly considered the cited reference as a 102(b) basis of rejection over the pending claims, particularly in view of the supplied David Green affidavit. Contrary to the Office's statements, Sawan et al. do not clearly include subject matter encompassed by the scope of the instant claims; if so, patentees would have included an example to that effect, rather than forcing the Office to make inferences from suggestions that a fabric as now claimed is within the scope of Sawan et al.'s broad disclosure. Again, at best, the Office may argue that Sawan et al. provide some basis of obviousness over the pending claims (although, again, Applicants disagree with such an assessment) through the suggestions, and not clear exemplifications, of the above-noted silver iodide-finished fabrics that are alluded to as possible, through not definite, articles produced via Sawan et al.'s methods. In any event, Applicants respectfully request withdrawal of such an improper anticipatory rejection over their current claims.

As for any *prima facie* obviousness, Applicants have relied upon the closest disclosure of Sawan et al. to their claimed articles to show that patentees fail to provide any fair suggestion of a wash durable silver iodide-based antimicrobial finish. The aforementioned declaratory evidence provided by co-inventor David Green was ample to overcome any obviousness basis of rejection. Returning to the requirements Applicants have been required to meet as is axiomatic within the realm of patent law, and which has

been presented by Applicants now *ad nauseum*, in order to determine unexpected results in view of prior art, Applicant was merely required to compare the preferred embodiment teachings of the Sawan et al. reference to their claimed invention. By definition, Sawan et al. believed that their Example 3 (with 0.05% silver iodide concentration immersion bath) was the best overall treatment for their particularly disclosed substrate. In fact, the other preferred embodiments required the same silver iodide concentration immersion bath. Furthermore, and of great importance, such an amount (0.05%) apparently saturated the available sites of patentees' required binder agent because an ethanol wash was further required to remove all excess silver iodide unbound to any substrate surface. Such a teaching implies that any excessive amounts of silver iodide (i.e., greater than 0.05%) within the immersion bath would also go unbound to the specific substrate surface which, in turn, would add nothing further to the durability thereof (such excess amounts would go unbound anyway). Thus, one of ordinary skill within this art would have viewed Sawan et al.'s teachings of greater amounts of silver iodide with skepticism, as any additional amounts present within such an immersion bath would be wasteful and thus would most likely avoid implementation of such a higher amount. The Office's statement that the supplied declaratory evidence is insufficient in view of the suggestion that 0.5% silver iodide concentration immersion baths may be utilized is thus unfounded and improper. The Office must consider all of the teachings of the prior art, whether direct or implied, in assessing the scope of the prior art teachings therein (as is required by the seminal case of Graham v. Deere). There is a reason why Sawan et al. stated that 0.05% concentration silver iodide was their preferred amount of such compound applied to the

treated surfaces via immersion; this point has been totally disregarded by the Office.

Applicant thus restates his position that the affidavit of co-inventor David E. Green showing that the retention of silver through the preferred procedures of patentee does not rise to the level as now claimed is proper and sufficient to overcome either the improperly applied anticipatory basis of rejection or, particularly, any obviousness basis of rejection over the present claims. There is simply no motivation provided by Sawan et al. to produce the same durable metal-treated fabrics as now claimed, particularly since no actual fabric examples have been exemplified by patentees at all. Reconsideration and withdrawal of any basis of rejection in view of Sawan et al. are thus earnestly solicited.

CONCLUSION

In view of all of the previous remarks and amendments, it is respectfully submitted that the pending claims are now in condition for allowance. Thus, it is respectfully requested that this application be passed on to issue.

March 10, 2003

Respectfully submitted,

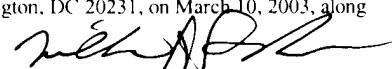
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CERTIFICATE OF MAILING

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